

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

KEVIN AUSTIN,)	Case No.1:08CV1883
)	
Petitioner,)	
)	
-vs-)	<u>ORDER</u>
)	
JULIUS WILSON,)	
)	Judge Christopher A. Boyko
Respondent(s).)	
)	

On August 6, 2008, Petitioner filed, *pro se*, a Petition for Writ of *Habeas Corpus* pursuant to 28 U.S.C. § 2254 (ECF Doc. #1). The case was referred to Magistrate Judge Kenneth McHargh for Report and Recommendation pursuant to Local Rule 72.2 (ECF Doc. # 4).

On December 18, 2008, the Court granted Respondent's Motion for Extension of time until February 17, 2009 to answer the Petition. Respondent filed its Return of Writ on February 17, 2009 (ECF Doc. #8).

The Magistrate Judge's Initial Order provided:

(1) Respondent shall file an answer ("Return of Writ") to the petition within sixty (60) days from the date of this order. The answer shall comply with Rule 5 of the Rules Governing § 2254 Cases, and shall address all legal issues raised in the petition.

(2) Petitioner shall have thirty (30) days from the filing of Respondent's answer to reply thereto by filing a Traverse.

(3) Respondent shall have fifteen (15) days from the filing of Petitioner's Traverse to respond thereto.

Petitioner has failed to timely file a Traverse or motion the Court for an extension of time. Therefore, the Court has, according to 28 U.S.C. § 2248, accepted as true the allegations of the Respondent's Return of Writ.

Accordingly, the Petition for Habeas Corpus is dismissed and the referral to Magistrate Judge McHargh is termed.

Furthermore, the Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith, and that there is no basis upon which to issue a certificate of appealability. 28 U.S.C. §2253(c); Fed. R. App. P. 22(b).

IT IS SO ORDERED.

Dated: October 7, 2009

S/Christopher A. Boyko
CHRISTOPHER A. BOYKO
UNITED STATES DISTRICT JUDGE